

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S LICENSE NO. 439779
Issued to: Henry A. Steele

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2069

Henry A. Steele

This appeal has been taken in accordance with Title 46 Code of Federal Regulations 5.30-1.

By order dated 26 August 1975, an Administrative Law Judge of the United States Coast Guard at New Orleans suspended Appellant's license for 6 months outright upon finding him guilty of negligence. The specifications found proved allege that while serving as a Pilot on board the SS ROBERT WATT MILLER under authority of the license above captioned, on or about 5 February 1975, Appellant: (1) wrongfully navigated the vessel at excessive speed, contributing to a collision with the Dredge ALASKA and and Barge GL 142 with loss of life; (2) wrongfully failed to slow or stop the vessel thereby contributing to the collision; (3) wrongfully failed to maintain control of the vessel, thereby contributing to the collision; and (4) wrongfully failed to initiate passing signals as required by 33 CFR 80.26.

At the hearing, Appellant was represented by professional counsel and entered a plead of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence twenty-one exhibits and the testimony of seven witnesses.

In defense, Appellant offered in evidence six exhibits and the testimony of one witness.

At the end of the hearing, the Judge rendered a written decision in which he concluded that the charge and each specification had been proved. He then served a written order on Appellant, suspending all documents issued to Appellant for a period of 6 months outright.

The entire decision and order was served on 29 August 1975. Appeal was timely filed on 15 September 1975.

FINDINGS OF FACT

on 5 February 1975, Appellant was serving as a Pilot on board the SS ROBERT WATT MILLER and acting under authority of his license while the ship was entering the Drummond Creek Range section of the St. Johns River near Jacksonville, Florida. The MILLER is a steam propelled tanker of 18,124 gross tons, is of Liberian registry, and is owned by Chevron Transport Company.

The Dredge ALASKA is a non self-propelled suction dredge which, on the date of the collision, was operating as a unit with the Barge GL 142 which was at its stern. The ALASKA had been working in the Drummond Creek Range of the St. Johns River since 26 December 1974, and at 1212 hours on 5 February 1975 was about 400 yards bearing 258 from the charted position of buoy 59. It was at this time and location that the collision occurred.

The Appellant boarded the MILLER at about 0712 on 5 February 1975 in the vicinity of the offshore anchorage at Jacksonville. At that time visibility was reduced, but at about 1027 visibility was improved and the MILLER heaved anchor to proceed up river. Routine tests of the vessel's equipment were made prior to commencement of its inbound trip, with the results of all tests being satisfactory.

About fifteen minutes prior to the collision, as the MILLER approached Broward Point Turn, Appellant contacted the ALASKA by radiotelephone and advised that he would be near the dredge in about fifteen minutes. He proposed a one-whistle (port to port) passage, to which ALASKA agreed.

At about 1145 the MILLER went to full speed ahead, and so remained until shortly before the collision. When making full speed the MILLER was moving about 10 knots through the water against an ebb current, or about 8.7 knots over the ground. As the MILLER passed Broward Point Turn she was in closer to the west bank than vessels normally traverse that area, and as she proceeded up Drummond Creek Range she was steering 6-8° right of the range. At 1208 her speed was reduced to half ahead in anticipation of passing the ALASKA.

At about 1208 or 1209 the MILLER's bow began to swing to port, and Appellant ordered right rudder. At 1209 speed was increased to full ahead. At 1211 the engine was put astern, but collision occurred at 1212. The MILLER struck the ALASKA on her port side, slid down her side and knifed into the GL 142. The collision resulted in two deaths, several injuries, and damage to the vessels involved.

BASES OF APPEAL

This appeal has been taken from the order imposed by the

Administrative Law Judge. No issues are raised with regard to the facts as stated in the order, or as to the conclusion that negligence was proved. The appeal is on the following grounds:

- I. That the Coast Guard lacks jurisdiction over the license of a state pilot under 46 USC §239;
- II. That the Coast Guard Hearing Officer lacks jurisdiction over the federal license of a pilot operating under his state license of a pilot operating under his state license under 46 USC S 214; and
- III. That suspension of Appellant's master's license constitutes a fatal variance which violates his constitutional rights.

APPEARANCE: Martin, Ade, Birchfield and Johnson, by W.O. Birchfield.

OPINION

I.

It is argued on appeal that the Coast Guard lacks jurisdiction over the license of a state pilot under R.S. 4450, 46 USC 239. This contention is based on the SORIANO case, 494 F. 2d 681 (1974), in which the Ninth Circuit overruled the "condition of employment" test used to decide whether action could be taken under 46 USC 239 against one acting in his capacity as a state pilot. The Coast Guard believes the SORIANO ruling to be incorrect, and will therefore not "apply the rule in SORIANO outside the ninth circuit or to cases not involving state pilots." (Appeal Decisions 2039, DIETZE, and 20045, ROWLAND.)

The question thus becomes whether Appellant was required, as a "condition of employment" as a state pilot in the State of Florida, to hold a federal pilot's license. The Investigating Officer made no attempt to show a "condition of employment" relationship between Appellant's state pilot's license and the pilotage endorsement on his master's license. My own research shows that Chapter 310 of the Florida Statutes, dealing with licensing of state pilots, provides no basis from which to conclude that Appellant was required as a "condition of employment" to obtain or maintain a federal pilot's license in order to be qualified as pilot for the State of Florida.

For the reasons stated above, I find that jurisdiction did not exist under 46 usc 239 in this case, and thus that action against Appellant's master's license under that statute is improper.

II.

Appellant next argues that the Coast Guard Hearing Officer lacks jurisdiction over the federal license of a pilot operating under his state license under 46 USC 214. I find, on the basis of the decision in Dietze v. Siler, Civil Action No. 75-3501 (E.D.La., 14 June 1976), that jurisdiction is lacking under 46 USC 214.

III.

The final point raised on appeal has become moot by virtue of my determination that the Coast Guard has no jurisdiction in this case. The question of a "variance" need not be considered to arrive at my conclusion.

CONCLUSION

I find that the Coast Guard has no jurisdiction under 46 USC 214 or 239 in this case.

ORDER

The order of the Administrative Law Judge dated at New Orleans, Louisiana, on 26 August 1975, is VACATED.

E. L. PERRY
Vice Admiral, U. S. Coast Guard
Vice Commandant

Signed at Washington, D.C. this 25th day of August 1976.

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Jurisdiction

Dietze v. Siler, as basis of finding that section 214

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lacking under 46 USC 214

lacking under 46 USC 239, because "condition of employment"
not shown

State Pilots

"Condition of employment" test

jurisdiction under 46 USC 214 was lacking

jurisdiction under 46 USC 239 was lacking; "condition
of employment" not shown